



***Town of Amherst***  
***Industrial Development Agency***

*Request for Proposals*  
*For Professional Legal Services*

*Issued: March 18, 2016*

The purpose of this Request for Proposal (“RFP”) is to identify suitable attorney(s) to act on behalf of the Town of Amherst Industrial Development Agency (“AIDA”) and its affiliate, the Amherst Development Corporation (“ADC”). The AIDA is the leading entity for this RFP. This is in connection with specific legal issues that may arise from time to time including, but not limited to, 1) acting as the AIDA General Counsel; 2) Transaction Counsel; 3) Parliamentarian; 4) conflict work, and 5) municipal law issues generally.

In order to respond, you must be an individual licensed attorney admitted to practice law in New York State.

### **INSTRUCTIONS**

Three (3) paper copies of your response to this RFP and request for information contained herein should be submitted to the offices of the Amherst Industrial Development Agency **no later than April 6, 2016 by 4:30 pm local time** at the following address:

Amherst Industrial Development Agency  
4287 Main Street  
Amherst, NY 14226

Packages must be marked: **PROPOSAL - FOR LEGAL SERVICES**. Late proposals will not be accepted and will be marked “LATE” and returned unopened.

The responses must contain a manual original signature of the attorney on a letter of transmittal.

We request that an electronic version of your RFP response also be provided to the AIDA via email addressed to [dmingoia@amherstida.com](mailto:dmingoia@amherstida.com). A PDF is preferred. If emailed, the date of the receipt of the paper copies of the RFP response still must be in before the required date/time of receipt.

### **ADDITIONAL INFORMATION**

It is the responsibility of the respondent to inquire about and clarify any aspect of the RFP that is not understood **no later than 4:00 p.m. on March 30, 2016**. Written questions and requests for clarification should be directed to the Executive Director of the AIDA, James Allen, 4287 Main Street, Amherst, NY 14226.

## **SCHEDULE**

The AIDA expects to select an attorney to perform legal services as necessary within a reasonable time following the submission deadline. In-person interviews may be necessary, but the AIDA reserves the right to conduct telephone interviews and make such inquiries as the AIDA determines to be appropriate.

## **GENERAL TERMS AND CONDITIONS**

Responses should be prepared simply and economically, and should provide straightforward and concise responses which satisfy the requirements of this RFP. Emphasis should be placed on completeness and clarity of content.

The successful bidder(s) will be required to execute a contract in a form acceptable to the AIDA. The term of the contract will be for one year, renewable at the discretion of the AIDA up to three times for a possible total of four (4) years. The AIDA, at its sole discretion, may terminate the contract at any time.

Submission of a response indicates acceptance by the firm of the conditions contained in this Request for Proposal, unless clearly and specifically noted in the proposal submitted and confirmed in the contract between the AIDA and the firm selected.

This RFP does not commit the AIDA to negotiate a contract, nor does it obligate the AIDA to pay for any costs incurred in preparation and submission of proposals or costs incurred prior to entering into a formal contract.

## **PROPOSED SERVICES**

### **General Counsel and Parliamentarian**

As General Counsel, the successful bidder may be called upon to provide legal counsel and other advice on the following topics:

1. Provide legal counsel and advice on compliance with the rules and regulations governing: IDA tax incentive products, historic tax credits, local development corporations, increment financing and other economic development partners and programs.
2. Provide counsel and support to the AIDA/ADC staff when they consult with prospective AIDA/ADC clients about possible deal structures, eligibility issues and other related matters.
3. Serve as AIDA/ADC counsel in connection with the negotiation and documentation of AIDA/ADC projects.

4. Minimize AIDA's/ADC's exposure when it provides tax incentives, loans and investments and acts as the pass-through recipient of grant funding.
5. Work with the AIDA's/ADC's Bond Counsel;
6. Proactively advise the AIDA/ADC in all corporate matters with respect to case law, statutes and regulations pertinent to the Agency and its operations;
7. Proactively provide legal counsel and advice on compliance with various Federal and State laws and regulations, including the New York State Public Authorities Accountability Act (PAAA) and related best practices.
8. If applicable, transition outstanding legal matters from the current General Counsel.
9. As Parliamentarian, attend AIDA/ADC Board meetings and, on occasion, committee meetings to provide guidance to Board members on proper procedures of meetings.

### **Transaction Counsel**

1. Prepare Resolutions on Projects and Other Matters voted on by the AIDA and ADC Board of Directors.
2. Prepare all documentation required to successfully execute and deliver AIDA and ADC approved projects, not limited to executed Lease Agreements with successful applicants.
3. Successfully remit properties to project beneficiaries once AIDA or ADC benefits expire.

### **Historical Data**

The AIDA averages about ten (10) real estate closings in a calendar year.

The AIDA holds about ten (10) full board meetings annually, with about fifteen (15) committee meetings annually for a total of twenty-five (25) meetings that it may require its attorney to attend.

### **PUBLIC RECORDS**

Proposals submitted under this request for proposal are subject to public disclosure under the New York State Freedom of Information Law. If bidders do not want certain proprietary data disclosed for any purpose other than for evaluating the proposal, the bidder must identify the reason for the restriction and the pages of the proposal which they wish to have restricted, if allowed by law.

## **REVIEW PROCESS**

### **A. Initial Review of Proposals**

A Selection Committee comprised of AIDA staff members and Board of Directors will initially evaluate each firm's proposal. Proposals that do not meet the following minimum requirements and those which are not responsive or not responsible (which includes, but is not limited to, the bidder's qualifications, financial stability, legal authority, integrity and performance) will not be given further consideration.

#### **Minimum Requirements:**

1. Submission of complete response by due date/time.
2. Firm authorized to do business in New York State.
3. References provided.

The Selection Committee will then select the proposals which are most advantageous to the AIDA. The AIDA reserves the right to modify the scoring criteria and weighting at its discretion.

### **B. Interviews / Reference Checks**

Based on the results of the initial review, the Selection Committee, at their discretion, may request a short list of firms to attend interviews and/or contact firm references. Presentations will provide firms with an opportunity to answer any questions that the Selection Committee may have on a firm's proposal. When discussions and negotiations are concluded, the AIDA may request revised proposals and/or best and final offers from the short-list of firms.

### **C. Final Review of Proposals**

The Selection Committee will then re-evaluate and re-score the short list of firms.

### **D. Final Selection**

The Selection Committee will recommend that the firm(s) with the highest overall scores will be awarded the applicable contracts. The recommendations must be approved by the AIDA Board prior to the execution of a contract. It is anticipated that a winning applicant will be selected and notified by May 6, 2016.

### **E. Right to Reject Proposals**

The AIDA reserves the right without prejudice to reject any or all proposals and to waive any informalities therein or in the selection process.

## **ACCEPTANCE/REJECTION**

The AIDA reserves the right to accept or to reject any or all of the proposal(s) and to select the proposal(s) which, in the opinion of the AIDA, will be in the AIDA's best interest. The AIDA also reserves the right to reject the response of any respondent who has previously failed in the proper performance of an agreement with the AIDA. The AIDA specifically may choose other than the lowest cost proposal in order to provide the requisite experience and background which are deemed to be most appropriate for the AIDA relative to the delivery of legal services. However, cost is a significant criteria in awarding legal work to be performed on behalf of the AIDA.

THE ISSUANCE OF THIS RFP CONSTITUTES ONLY AN INVITATION TO PRESENT PROPOSALS. THE AIDA AND THE SELECTION COMMITTEE RESERVE THE RIGHT TO DETERMINE, IN THEIR SOLE DISCRETION, WHETHER ANY ASPECT OF THE PROPOSAL SATISFACTORILY MEETS THE CRITERIA ESTABLISHED IN THE RFP. THE AIDA AND SELECTION COMMITTEE RESERVE THE RIGHT TO SEEK ADDITIONAL INFORMATION AND/OR CLARIFICATION FROM ANY RESPONDENT, THE RIGHT TO NEGOTIATE WITH ANY RESPONDENT SUBMITTING A RESPONSE, AND THE RIGHT TO REJECT ANY OR ALL RESPONSES, WITH OR WITHOUT CAUSE. IN THE EVENT THAT THE RFP IS REJECTED BY THE AIDA FOR ANY REASON, INCLUDING, BUT NOT LIMITED TO, THE FAILURE TO OCCUR OF ANY OF THOSE THINGS OR EVENTS SET FORTH HEREIN, THE AIDA SHALL HAVE NO LIABILITY TO ANY RESPONDENT FOR ANY COSTS OR EXPENSES INCURRED IN CONNECTION WITH THIS RFP OR OTHERWISE.

## **PROPOSAL REQUIREMENTS**

I. **Qualifications** - The AIDA intends to engage person(s)/firm(s) that possesses the professional, financial and administrative capabilities to provide the proposed services.

II. **Transmittal Letter** - Each response should be accompanied by a letter of transmittal not exceeding three (3) pages which summarizes key points of the response and which is signed by the applying attorney.

III. **Questions** - **For each area bidding on (General Counsel, Parliamentarian, Transaction Counsel) please provide the following:**

- i. **Firm's Similar Clients/Client Service** - List the firm's most significant clients serviced within the last five (5) years that are similar to the AIDA and its affiliated economic development corporation, ADC. Indicate the primary office and personnel that serviced these clients. Also, describe if the firm has any programs, policies or measures in place to ensure timely responses and client satisfaction.

- ii. Firm's Structure: Describe the firm's head office location and the number and size of its local/regional office(s) and length of time in business.
- iii. Firm's Bench Strength: Indicate the breadth and depth of the firm's specialized resources to handle unique legal matters. Identify the firm's alliances or affiliations with other firms or organizations to share knowledge and resources. Please attach biographies of attorneys not identified in 1 above.
- iv. Conflict of Interest: Provide a description of (i) any material arrangements, relationships or other employment that the firm or any firm employee has with any persons or entities that may create a conflict of interest or the appearance of a conflict of interest in acting on behalf of the AIDA, (ii) any family relationship that any employee of the firm has with any AIDA public servant that may create a conflict of interest or the appearance of a conflict of interest in acting on behalf of the AIDA, and (iii) any other matter that the firm believes may create a conflict of interest or the appearance of a conflict of interest in acting on behalf of the AIDA. Please describe any procedures the firm either has, or would adopt, to assure the AIDA that a conflict of interest would either not exist or not be a significant problem for the firm or AIDA.

IV. Compensation - Please set forth the attorney's fee schedule per the COST STRUCTURE listed below and describe how time is to be billed (i.e., to the nearest tenth of an hour, quarter of an hour, half hour, etc. If more than one person from a firm is expected to work on behalf of legal matters described herein, identify those attorneys or paralegals by individual name, type of AIDA legal matters they would work on, and their billing rate. Identify when the attorney was admitted to practice in the state of New York, their ownership status in the law firm, and how long so-designated at the firm. If a paralegal, please set forth the number of years of experience the paralegal has in New York practice.

#### COST STRUCTURE

**Bidders may bid on the position of 1) General Counsel and Parliamentarian or 2) Transaction Counsel or both.**

#### General Counsel and Parliamentarian

1. List the hourly rate to attend meetings
2. List the hourly rate to perform Parliamentarian functions, if a separate person will perform this task
3. List the hourly rate to perform all other General Counsel functions

Transaction Counsel

List the hourly rate and/or fee schedule to perform Transaction Counsel functions

V. Expenses and Costs: Any additional costs or fees should be listed in the RFP.

VI. Pricing and Fees – Expenses and Costs listed in your proposal shall be in effect for ninety (90) days from the date of final submission for the purposes of this RFP.

VII. Insurance - The bidder agrees to procure and maintain, for the term of the Contract, insurance with insurance companies authorized to do business in New York State. Please provide your anticipated insurance coverage for this contract and indicate your agreement to add the AIDA to the policy for the term of the contract.

VIII. References - Provide the names and contact information of client references. Ideally, these references should be for clients similar to the AIDA and have worked with some or all of the key attorneys identified for this RFP.

- General Counsel and Parliamentarian bidders: Provide up to five (5) references
- Transaction Counsel bidders: Provide up to three (5) references

Firms should indicate whether the firm, or any of its Partners, Associates or employees, or anyone acting on its behalf in the last five (5) years, has:

1. Ever been convicted of any crime or offense arising directly or indirectly from the conduct of the firm's business, or whether any of the firm's Partners, Associates, employees, or persons exercising substantial policy discretion has ever been convicted of any crime or offense involving financial misconduct or fraud, and, if so, a detailed description of any such convictions and surrounding circumstances.
2. Ever been indicted or otherwise charged in connection with any criminal matter arising directly or indirectly from the conduct of the firm's business, and, if so, please describe any such indictments, charges, dispositions and surrounding circumstances in detail.
3. Ever been subject to any disciplinary proceeding arising directly or indirectly from the conduct of the firm's business and, if so, please describe any such charges, dispositions and surrounding circumstances in detail.
4. Ever received an adverse determination with respect to actions, proceedings, claims or complaints concerning violations of Federal, State or local equal employment opportunity or pay equity laws or regulations, and, if so, please describe any such adverse determinations in detail.

VIII. Additional Information. Required information shall include the name, title and department of any employee, attorney or individual of your firm who was a Town of Amherst or AIDA employee or Board Member in the one-year period preceding the date of your response to this RFP.

X. Marketing Materials/Brochures/Website: While not required as part of the submission, a copy of any marketing materials, brochures, and/or inclusion of web link information which further expands upon the qualifications and experience of the respondent is appreciated.

Thank you for expressing an interest in providing legal services on behalf of the Amherst Industrial Development Agency and we look forward to your participation in this RFP.